§1495-I. Insolvency and liquidation

1. Voluntary liquidation. A payroll processor who voluntarily ceases to do business in the State is subject to the following provisions.

A. Prior to voluntarily ceasing business as a payroll processor, a payroll processor shall:

(1) Notify the administrator of the proposed termination at least 30 days prior to its effective date;

(2) Notify all employers in writing of the proposed termination at least 30 days prior to its effective date;

(3) Provide all employers with detailed final accountings of all accounts;

(4) Remit all money held by the payroll processor to each respective employer or the appropriate taxing authority; and

(5) Return its license to the administrator for cancellation. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

B. When terminating a business, a payroll processor whose contract with an employer does not authorize the processor to assign the account to another processor may not transfer the account to another processor without first securing the written permission of the employer. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

2. Involuntary liquidation. A payroll processor who is no longer eligible to do business in this State is subject to the following provisions.

A. If, upon examination of a payroll processor, the administrator is of the opinion that the payroll processor is insolvent or can no longer obtain a surety bond or when the license of a payroll processor has expired or terminated for any reason, the administrator may appoint a receiver who shall proceed to close the payroll processor. The person appointed by the administrator as a receiver may be the administrator, a deputy or such other person as the administrator may choose, and a certified copy of the order making such appointment is evidence of the appointment. A receiver has the power and authority provided in this chapter and such other powers and authority as may be expressed in the order of the administrator. If the administrator or a deputy is appointed receiver, no additional compensation need be paid, but any reasonable and necessary expenses as a receiver must be paid by the processor. If another person is appointed, then the compensation of the receiver must be paid from the assets of that processor. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

B. Upon taking possession of the property and business of a payroll processor under this section, the receiver:

(1) May collect money due to the administrator and perform all acts necessary to conserve the payroll processor's assets and business and shall proceed to liquidate the payroll processor's affairs;

(2) Shall collect all debts due and claims belonging to the payroll processor and may sell or compound all bad or doubtful debts;

(3) May sell, for cash or other consideration or as provided by law, all or any part of the real and personal property of the payroll processor;

(4) May take, in the name of the administrator, a mortgage on the real property from a bona fide purchaser to secure the whole or part of the purchase price; and

(5) May borrow money and issue evidence of indebtedness therefor. To secure the repayment of this money, the receiver may mortgage, pledge, transfer in trust or hypothecate any of the property of the payroll processor, whether real, personal or mixed, superior to any charge for expenses of liquidation. [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

C. The assets of the payroll processor in liquidation, exclusive of any bond proceeds, must be disbursed in the following order:

(1) First, the payment of the costs and expenses of liquidation;

(2) Second, payment of payroll, tax and unemployment insurance premium funds held by the payroll processor;

(3) Third, payment of all debts, claims and obligations owed by the payroll processor;

(4) Fourth, the payment of claims otherwise proper that were not filed within the prescribed time; and

(5) Fifth, the payment of any obligation expressly subordinated to claims entitled to the priority established by subparagraphs (1) to (3). [PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

3. Judicial review. A payroll processor closed by action of the administrator pursuant to this chapter may bring an action challenging the administrator's appointment of receiver in Superior Court of Kennebec County or of the county in which the processor transacts business within 10 days after the administrator appoints a receiver. The court shall uphold the administrator's finding that a payroll processor is insolvent or that its condition is such as to render its further proceedings hazardous to the public or to those having funds in its custody and shall uphold the appointment of a receiver unless the court finds that the administrator's action was arbitrary and capricious.
[PL 2003, c. 668, §6 (NEW); PL 2003, c. 668, §12 (AFF).]

SECTION HISTORY

PL 2003, c. 668, §6 (NEW). PL 2003, c. 668, §12 (AFF).

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